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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/713,163	11/14/2000	Allen D. Polowinczak	1247 P 179	3393

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EXAMINER

WALSH, JOHN B

ART UNIT

PAPER NUMBER

3676

DATE MAILED: 05/19/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/713,163

Applicant(s)

POLOWINCZAK ET AL.

Examiner

John B. Walsh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22-32, 39-46, 48 and 50-58 is/are allowed.
- 6) ☒ Claim(s) 1-3, 13, 15-19, 21, 33, 34, 38, 47 and 49 is/are rejected.
- 7) ☒ Claim(s) 4-12, 14, 20 and 35-37 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

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## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3, 13, 17-19 21, 33, 34, 47 and 49 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,400,026 to Brown, Jr.

Brown, Jr. '026 discloses a housing (26) having an outward end opening (figure 4; opening at 56) and a cover (80); a latch bolt (34) disposed within the housing and having a nose adapted for engaging a respective one of the guide rails (figure 1); an actuator (28,78) connected to the latch bolt and sized to be positioned over the entire cover (figure 2; the actuator is positioned over the entire cover).

As concerns claim 2, means for biasing the latch (30).

As concerns claims 3 and 34, the cover has opposed longitudinal peripheral edges (vertical peripheral edges of 80) and the actuator has opposed depending longitudinal flanges (64), the flanges being positioned over the peripheral edges (figure 2; 64 are above/over the peripheral edges).

As concerns claim 13 and 47, the actuator has a control button (78).

As concerns claim 17, the housing and latch are made from plastic (column 1, line 25).

As concerns claim 18, the biasing means comprises a spring (30).

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As concerns claim 19, the top rail has opposed header slots and the housing includes means for supporting the housing in the header slots (84).

As concerns claim 21, a depending tab (82) engaging one of the stiles.

As concerns claim 33, discloses a housing (26) adapted to be supported by the top rail, said housing having an outward end opening (figure 4; opening at 56) and a cover (80); a latch bolt (34) disposed within the housing and having a nose adapted for engaging a respective one of the guide rails (figure 1); an elongated body (28) connected to the latch bolt and sized to be positioned over the entire cover (figure 2; the elongated body is positioned over the entire cover).

As concerns claim 49, discloses a housing (26) adapted to be supported by the top rail, said housing having an outward end opening (figure 4; opening at 56), a cover (80) and a depending tab (82) adapted for engaging one of the stiles; a latch bolt (34) disposed within the housing and having a nose adapted for engaging a respective one of the guide rails (figure 1); an elongated body (28) connected to the latch bolt and sized to be positioned over the entire cover (figure 2; the elongated body is positioned over the entire cover).

3. Claims 33 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,669,639 to Lawrence.

Lawrence '639 discloses a tilt latch comprising a housing (31) having an outward end opening (figure 7; left side of 31); a latch bolt (20) having a nose (figure 7; left end of 20); an elongated body (30) connected to the latch bolt (figure 3; is connected to the latch bolt through 31 to the bolt).

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As concerns claim 34, the cover has opposed longitudinal peripheral edges (32a) and the actuator has opposed depending longitudinal flanges (figure 14), the flanges being positioned over the peripheral edges (figure 14).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 15, 16 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,400,026 to Brown, Jr. as applied to claims 1 and 33 above, in view of U.S. Patent No. 5,669,639 to Lawrence.

Brown, Jr. '026 does not explicitly teach the actuator/elongated body made of zinc.

Lawrence '639 teaches that the latches (16 and 17) may be made from both metal and plastic components (column 4, lines 35-39). Furthermore, Lawrence '639 indicates that the latch mechanism may be made from zinc. Lawrence '639 teaches that both plastic and zinc are equivalently capable materials for use in latch mechanisms.

The teaching by Lawrence '639 to use metal zinc in the latch mechanism renders it obvious to one having ordinary skill in the art to use zinc, as a preferred material for an elongated body/actuator of the latch mechanism of Brown, Jr. '026. One of ordinary skill in the art at the time the invention was made would recognize the advantages of using zinc for the actuator so that it does no wear easily.

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6. Claim 38 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,669,639 to Lawrence.

Lawrence '639 does not explicitly disclose the elongated body made of zinc.

Lawrence '639 teaches that the latches (16 and 17) may be made from both metal and plastic components (column 4, lines 35-39). Furthermore, Lawrence '639 indicates that the latch mechanism (17) may be made from zinc. The teaching by Lawrence '639 to use metal zinc in the latch mechanism (17) renders it obvious to one having ordinary skill in the art to use zinc for the elongated body of the latch mechanism (16). One of ordinary skill in the art at the time the invention was made would recognize the advantages of using zinc for the actuator so that it does no wear easily.

#### ***Response to Arguments***

7. Applicant's arguments filed February 27, 2003 have been fully considered but they are not persuasive.

The applicant argues that Brown does not disclose a cover. Brown discloses element 80 which meets the claim limitations of a cover, wherein the claims have been given their broadest reasonable interpretation.

The applicant argues that Brown does not disclose an actuator sized to be positioned over the cover. The claim language only requires that the actuator be of a certain size such that it may be positioned over the cover. The language of the claim as written does not positively recite the actuator positioned over the cover, only sized to be positioned. Regardless, as shown in figure 2 of Brown the actuator 28, 78 is positioned over the entire cover 80.

The applicant argues that Lawrence does not disclose the actuator as claimed in claims 33 and 34. Element 31 of Lawrence satisfies the claim limitations of a housing having an outward end opening (figure 7; left side of 31) and a cover (bottom portion of 31). The elongated body (30) is connected to the latch bolt (connected through 31 to the bolt). The claim language only requires that the elongated body be of a certain size such that it may be positioned over the cover. The language of the claim as written does not positively recite the elongated body positioned over the cover, only sized to be positioned. Regardless, Lawrence meets the claim limitation of an elongated body.

The applicant argues that the obviousness rejection of Brown and Lawrence fails to establish a prima facie case of obviousness since “it is improper to rely on the level of skill in the art to combine the cited references” and instead “the suggestion or motivation to combine the references must be found in the references themselves”. According to MPEP 2143, “There are three possible sources for a motivation to combine references: the nature of the problem to be solved, the teachings of the prior art, **and the knowledge of persons of ordinary skill in the art.** (emphasis added)” In re Rouffet, 149 F.3d 1350, 1357, 47 USPQ2d 1453, 1457-58 (Fed. Cir. 1998).

As concerns claims 15, 16 and 38, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. One of ordinary skill in the art at the time the invention was made would recognize the advantages of using zinc for the actuator so that it does not wear easily.



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*Allowable Subject Matter*

8. Claims 22-32, 39, 40-46, 48 and 50-58 are allowed.
9. Claims 4-12, 14, 20 and 35-37 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Conclusion*

10. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to John B. Walsh whose telephone number is 703-305-0444. The examiner can normally be reached on Monday-Friday from 8:30-6:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Knight can be reached on 703-308-3179. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9326 for regular communications and 703-872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-872-9325.

  
**Anthony Knight**  
**Supervisory Patent Examiner**  
**Technology Center 3670**

JW  
May 16, 2003